GOVERNMENT OF MADRAS. Scott. II-28 —60.000—31-10-50

R. W. (195 2) Department.

~~Endorsement~~
~~D.O~~
Memorandum ✓
~~Lodged~~

No. 31833/52-1

Dated 17-5-1952

Closed
Ans
Report
MD

FURTHER PAPERS.

Department.	Number.	Series.	Date.
Memo No 55559	5	I d 10.11.51	

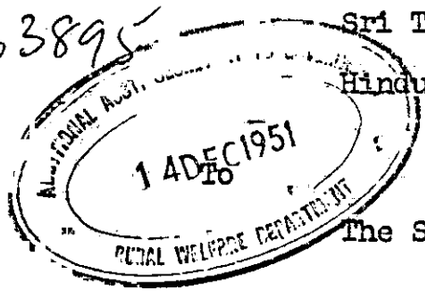
Office of the Commissioner for Hindu
Religious & Charitable Endowments (Adm) Department,
Madras.

Lettee/ No.134133/51.1. Adm. dated 13-12-1951.

From

Sri T.M.Chinnaiya Pillai, M.A.,B.L.,
Commissioner,
Hindu Religious & Charitable Endowments (Adm) Department,
Madras.

63895



To

The Secretary to the Government of Madras,
Rural Welfare Department, Fort St. George, Madras.

Sir,

Sub: Hindu Religious Endowments - Srimad Ananteeswarar temple at Manjeshwar - South Kanara Dt - trustee- appointment.

Ref: Govt. Memo.No.55559/R.W(V)/51.1. dated 10-11-1951.

It has been suggested in the Government Memorandum cited that the name of Sri M.N.Kini might be considered for appointment as one of the trustees of the temple mentioned above. The said temple is a notified religious institution coming under Ch.VI. of the Madras Hindu Religious & Charitable Endowments Act, 1951, having been notified in G.O.Ms.2101 P.H. dated 10-6-1939 to b subject to the provisions of Chapter VI-A of the Madras Act II of 1927. Ever since it was notified it has been managed solely by a paid executive officer appointed by the Board and there has been no trustee for the temple. It is a temple included in the list published under section 38 of the present Hindu Religious and Charitable Endowments Act.

2. The object of notifying a religious institution is to set right its administration through a whole time paid executive officer with substantial powers and to secure efficient and satisfactory management. Ordinarily action for notifying an institution is taken when the defects in the administration cannot possible be set right if the system of management by trustees either under a scheme or otherwise is continued and so the object of notifying an institution will be nullified if honorary trustees whether hereditary or not, continued to have substantial power in the management. Hence it was provided in section 65-C(2) of the old Act that the executive officer

appointed by the Board shall exercise such powers and perform such duties as may be vested in or assigned to him by the Board and that the Board shall define the powers and duties which may be exercised and performed respectively by the executive officer and the trustee, if any, of the notified temple. Under this section the Board had power to refrain from appointing non-hereditary trustees or to limit the number of such trustees, if any, or in its discretion to deprive hereditary or non-hereditary trustees of real power and vest such powers in the executive officer. As a matter of ~~fxxx~~ policy, except in special circumstances, non-hereditary trustees were not appointed by the Board for notified temples. Such a policy has yielded beneficient results from the point of view of the interests of the trust. The temple now in question is one of the temple for which no trustees were appointed.

3. The scheme of Chapter VI of the present Act is substantially the same as that of Chapter VI-A of the old Act. Section 67(1) of the present Act corresponds to section 65(C)(2) of the old Act; Section~~xx~~ 67(2) of the present Act re-produces the first sentence of the Explanation to section 65-C(2) aforesaid and similarly as in the Explanation uses the expression "the trustee, if any". But the proviso to section 67(1) is a new provision. This proviso was necessitated by reason of the fact that it is only in this Act (XIX of 1951) that notification proceedings were extended to maths and while doing so, it was also intended that the religious duties of a madhathipathi should not ~~never~~ be exercised by an executive officer. I am of opinion that the said proviso does not make any material difference because the administration of a religious institution is in the administration of its endowments.

Again, while section 51 of the old Act did not make appointment of trustees obligatory, sec.39(1) would appear to suggest that the constitution of the Board of trustees for an institution is not optional. But it seems to me that this section should be read with section 67(2). The retention of the expression "the trustee if any" in section 67(2) clearly envisages a situation when there is no trustee at all.

4. The policy adopted by the Board namely non-appointment

of trustees to notified temples is thus not inconsistent with the present Act. In this view, as already stated in my letter to Government No.130303/51.1. Adm. dated 2-11-1951 I have not appointed trustees for notified temples under section -39 of the present Act.

In view of the Government's suggestion in the Memorandun cited, I request orders whether trustees should be appointed to notified religious institutions also under the said section 39.

Yours faithfully,

Commissioner.

smd 13/12

13-12-51

Legal (Opinions-A) Dept

D.O. No. 22484/51-1 dated 18-3-52

My ~~dear~~ Dear Chinnaiya Pillai,

Sub: Hindu Religious Endowments —
Srimad Anandeswar temple
at Manjeshwar, South Kanara
District - Trustee - Appointment

~~Ref: Correspondence ending with your~~
letter No. 1341/33/51-1 Adm
dated 13.12.1951

With reference to our discussions yesterday, Will you please send me ~~from~~ copies of orders notifying temples in which trustees have been removed from office. Also will you please let me know — (a) ~~State~~ under what statutory power such removal had ~~been~~ was ordered? Please ~~let me know also~~ whether any hereditary trustee has been removed by any such ~~a~~ notification ~~and dates~~.

(b) whether the removal was challenged in the Courts or otherwise; and

(c)

With kind regards, Sincerely yours ~~faithfully~~,

NM
17/3/52

NM
18/3

Sri T. M. Chinnaiya
Pillai, M.A., B.L.,
Commissioner,
Hindu Religious
& Charitable
Endowments (Adm) Dept.
Madras.

Dept.
BS
18/3/52.

T. Chinnaiya Pillai, M.A.,B.L., Commissioner.

Office of the Commissioner for Hindu Religious and Charitable Endowments, M a d r a s.

D.O. No. 12717/52-1-Adm. Dated 24th April 1952.

Dear Mr.Rajagopalan,

Sub: Hindu Religious Endowments - Srimad Anantheeswarar temple - Manjeshwar South Kanara district - Trustee appointment.

Ref:Your D.O. No. 22484/51-1-dated 18-3-1952.

I am not aware of any case in which any trustee of a temple was removed by an order notifying the temple. So far as I know, only the powers of the trustees in office, if any, at the time of the notification, were restricted bythe rules framed defining the powers as between the executive officer and the trustees. In the case of Srimad Ananthswar temple, Manjeswar, the trustees in office resigned just before notification and their places were not filled up. I also remember a case in which the hereditary trustee ofa notified temple (Sri Muthalamman temple, Agaran, Dindigul taluk) was removed, not by notification proceedings but under section 53-A of the Madras Hindu Religious Endowments Act, 1926 after regular enquiry.

Inthese circumstances I have to state that there does not seem to have been any case of removal of a trustee, hereditary or non-hereditary, on notification of a temple.

With kind regards,

Yours sincerely,

To

Sri K.V. Rajagopalan, M.A.,M.L.,
Secretary,(Legal) Department,
Fort Saint George,
M a d r a s.

V.E

Issue

R.W
V.

H.R.& C.E Act 1957 - Constitution of Bd of Trustees ~~etc~~ for notified religious institutions/institutions issued

Ref From the Comm., H.R.& C.E (W) Dept Lr No 134733/57-1 Adm DL 13-12-57.

Memo No 31833 R.W.I/57-1 dated 17.5.58.

~~The Comm., H.R.& C.E (A) Dept is informed that~~ The Govt are advised with the provisions of section 39(1) and (2) of the H.R.& C.E. Act, 1957, are mandatory in nature and Land with the

2 to

of creation to appoint trustees ~~under~~
~~section 39(2)~~ for schemes / with terms
~~of the character described~~ under section 39(1), + (2)
is not abrogated by ~~anything in~~
section 67(2) - The Commn is thus free
under a duty to appoint new + additional
trustees even for existing schemes notified
under the Act - The Commn is requested to
Kindly
take action immediately so for the
~~register is concerned the decision taken~~
15/5. ~~by them in the matter of~~ appointment - In
many non-Parochial charities the Commn. has
not institutions; the required
Section 39 of the Act, if the trustees
16.5.52 not done so till now and should
a report to you before 15.6.52.

Dept.
2 Secs.
Copy to Mr Cumm.

17.5.52

17.5.52

Rural Welfare Deptt.(V)

Sub: H.R.&.C.E. - Religious institutions- Notified - Appointment of trustees.

Ref: From the Commissioner, H.R.&.C.E.(Admn)Deptt. letter No.134133/51-1 Adm dated 13-12-1951.

With reference to the minutes of H.M.(Agr) that the name of one Sri M.N.Kini of Manjeswar might be considered for appointment as trustee or the temple ~~for~~ the Sri Ananteeswarar temple at Manjeshwar. the Deputy Commissioner H.R.&.C.E.(Admn)Deptt. Coimbatore was informed that ~~the~~ his name might be considered at the time of filling up the vacancies of the trusteeship of the temple. The Commissioner now repor that the temple was notified under Chapter VI-A of the H.R.E. Act, 1926 in 1939 and that it has no trustee and that its administration is being carried on by an Executive Officer only.

In this connection he has raised the question whether it is obligatory to appoint trustees for notified temples und the new Act. ~~In paras 2~~ [illegible] & 3 of his letter on pp.1-2 c.f. the Commissioner has explained in detail the circumstances that necessitate recourse to notification proceedings and has made a comparative study of the corresponding provisions relating to notification proceedings under the old and the new Acts. He considers that non-appointment of trustees to notified temples is not inconsistent with the present Act.

The same doubt has been raised in another connection by the Dy.Commissioner, Tanjore about the appointment of a Board of Trustees for the Sri Rajagopalaswami temple at Mannargudi, Tanjore district.

As the position is not free from doubt Legal may be requested to advise whether appointment or award of Trustees to notified temples is obligatory under Sec.39(1) of the Act or whether ~~it may be taken that~~ in view of sec.67(2) it may be taken that the non-appointment of trustees to notified religious institution is not inconsistent with the provisions of the new Act.

26.12.51

The provisions in Chapter VI of the

H.R. & C.E. Act, 1951 are applicable to notified religious institutions only and are of a special nature not comparable with provisions of other chapters in the Act which are applicable to other religious institutions. The appointment of an Executive Officer for a notified religious institution is in the nature of a Special Officer for a Municipality. The appointment of non-hereditary trustees in addition will not be conducive to the efficient administration of the notified temples as such. The view of the Commissioner that the appointment of Board of Trustees to notified temples is not obligatory under sec.39(1) of the Act, may therefore be accepted.

Legal may see for remarks.

27.12.57 27.12.57

legal

Legal (Opinions-A) Dept.

(Issued in D.O. letter No 22484/51-1, Legal, dt 18-3-52)

R.W.V.O. 63895/V/51-1
28-12-57
RO
AS

The question raised in this file was discussed by Secretary with the Commissioner, Hindu Religious and Charitable Endowments (Adm) Department on the 17th instant. A D.O. also has been sent to the Commissioner requiring information on certain points --please see page 5 c/f D.O. at [illegible] This may now be sent to R.W. for perusal and return of the file.

ASSISTANT SECRETARY 22484 31 DEC 1951 LEGAL DEPARTMENT

Received 8/3/52

19.3.52 19/3/52

R.W.V.

May be perused and returned

Legal W.O. 22484/51-1 19-3-52

20 MAR [illegible] ADDITIONAL ASSISTANT SECRETARY 4618 27 MAR 1952 LEGAL DEPARTMENT

21.3.52 21.3.52 22.3.52

21131

ASS

(D.O. letter No 12717/52-1 Adm, dt 24-4-1952 from the Commr, H R & C E (Adm) Dept)

Legal received on 25/3

R.W.V.O 63895/V/51-2

22-3-52

Legal (Opinions-A) Dept.

As already stated in the note of this department on page 2 ante, the question raised in this file was discussed by the Legal Secretary with the Commissioner, Hindu Religious and Charitable Endowments (Admn) Department, on 17-3-1952 and, with reference to the discussions, the Commissioner was requested to send some copies of orders notifying temples in which trustees have been removed from office. He was also requested to furnish information as to the statutory power under which the removal was ordered, whether the removal was challenged in the Courts or otherwise, and whether any hereditary trustee was, in fact, removed by any such notification. In his D.O., dated the 24th April 1952, the Commissioner has stated that he is not aware of any case in which any trustee of a temple was removed by the order in which the temple was notified; and that only the powers of the trustees in office at the time of the notification, if there were any at the time, were restricted by the rules defining the powers as between the executive officer and the trustees. He has also stated that in the case of the Srimad Anantheeswarar temple at Manjeshwar, the trustees in office had resigned just before the notification and that their places were not filled up. He has added that there has been so far no case of the removal of a trustee, hereditary or non-hereditary, on notification of a temple. It will thus be seen that so far there has been no precedent for the removal of a trustee in pursuance of notification proceedings.

2. Sub-section (1) of section 39 imposes an obligation on the Commissioner to constitute Boards of Trustees for religious institutions of the character described in that sub-section. Sub-section (2) of section 39 requires the Commissioner to appoint the non-hereditary trustee or trustees of instituttions having both hereditary and non-hereditary trustees. Section 67(2) relates to a different matter. That section provides (1) that the powers and duties of the executive officer should be such as may be defined by the Commissioner and (2) that the powers and duties of the trustees also should be defined by the Commissioner himself. The obligation to appoint the trustees arises because of the mandatory nature of the provisions of section 39(1) and (2) and it is not abrogated by anything in

section 67(2), which, as already stated, relates to an entirely distinct matter. The Commissioner is therefore under a duty to appoint non-hereditary trustees even for institutions notified under the Act. T... argument based on the use of the words "if any" in section 67(2) has no force. Those words may well be taken as relating to cases where there is no trustee in office at the relevant time. It cannot be said that the presence of those words in section 67(2) has the effect of dispensing with the appointment of trustees, when under the clear ~~tenure~~ terms of section 39(1) and (2) the Commissioner is under an obligation to appoint them.

5. If the appointment of trustees in addition to the executive officer leads to friction in the administration of religious institutions, the Act should be amended.

Venkatachalapathy 10-5-52
K.V. Rajagopalan 10.5.52
R. W. Dept

Leg. U.O. 4618/52
d 10.5.52

Rural Welfare Dept
V.

Please see the notes of Legal from page 3 above. The position may be explained by the Commissioner. The 8 page memo below is for approval ~~Reply to circular letter No. (R.R.)~~

16/5/52. 16.5.52 17.5.52 17.5.52

(Issued as Memo No. 31833/52-1 RWV dt 17-5-52)